IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

INTERNATIONAL FLEET AUTO SALES, INC., and JOSEPH GALLAGHER	:	CIVIL ACTION
	:	No. 97-CV-1675
v.	:	
	:	
NATIONAL AUTO CREDIT and AGENCY RENT-A-CAR	:	

O'Neill, J. February , 1999

M E M O R A N D U M

This action was initially filed in the Court of Common Pleas of Philadelphia County. Defendants removed the case to this Court pursuant to 28 U.S.C. § 1441(a), invoking the Court's diversity jurisdiction. On January 5, 1999, I sua sponte ordered that defendants submit a brief and any other appropriate materials to support their claim that the amount in controversy was sufficient to support diversity jurisdiction. Having considered the parties' responses, I conclude that diversity jurisdiction is lacking and therefore will remand the case to the state court pursuant to 28 U.S.C. § 1447(c).

BACKGROUND

The following facts appear from the complaint and various documents attached to it. Plaintiff International Fleet Auto Sales, Inc. ("International Fleet") is a used car dealership which is solely-owned by plaintiff Joseph Gallagher. International Fleet began operating in Allentown, Pennsylvania in March 1993. In December 1993, plaintiffs entered into a written contract with defendants

National Auto Credit and Agency Rent-A-Car. Pursuant to this agreement, defendants provided financing to plaintiffs' customers, undertook responsibility for collecting customers' payments, and consigned former rental cars ("Program cars") to plaintiffs for sale. For each non-Program car they financed, defendants gave plaintiffs a cash "advance" for a portion of the account receivable (i.e., retail installment contract), for which plaintiffs were charged interest at prime less 3%. Defendants collected payments from the customers, took a 20% collection fee off the gross receipts, and credited plaintiffs' account with the remainder, net of any collection costs. Defendants also gave plaintiffs an "advance" for each Program car they sold (all of which had to be financed through defendants), but in the form of a credit to their account rather than in cash. Plaintiffs were also charged interest on these advances. International Fleet sold around 50 used cars that were financed through defendants from December 1993 to November 1994, when it went out of business for reasons unrelated to this litigation. (See Def. Ex. I, e.g., monthly statement for October 1994.)

Plaintiffs filed this action on February 6, 1997 in the Court of Common Pleas. Their inartfully drafted complaint appears to allege, in essence, that defendants charged them certain expenses above and beyond those contemplated by the parties' agreement and have failed to provide an accounting of these charges. More specifically, plaintiffs allege they were (1) overcharged and/or double-charged for certain collections costs; (2) charged at too-high a rate of interest, or at an undisclosed rate of interest, for certain cash advances given to them by defendants for vehicle purchases financed by defendants; and (3) charged interest on the "credit" advances received for financed Program cars even though they never got the use of the advances for which they were charged interest. Based on these allegations, plaintiff asserts three counts. Count I asserts a claim for breach of contract and prays for damages "in excess of" $50,000. Count II appears to assert

entitlement to an accounting, but also prays for damages "in excess of" $50,000. Count III appears simply to reiterate the first two claims and prays both for an accounting and for unspecified damages for breach of contract.

On March 7, 1997, defendants removed the case to this Court pursuant to 28 U.S.C. §§ 1332(a) and 1441.[1] (Notice of Removal, ¶ 9.) The notice of removal alleged that the parties were of diverse citizenship, that plaintiffs sought in excess of $100,000 in compensatory damages, and that the amount in controversy exceeded $50,000. (Id. at ¶¶ 8-9.) I subsequently ordered that defendants file an amended notice of removal alleging that the amount in controversy exceeded $75,000,[2] if they could do so in good faith, and defendants did so on March 20, 1997. As with the first notice of removal, the only factual allegation in the amended notice bearing on the amount in controversy was the allegation that plaintiffs sought in excess of $100,000 in compensatory damages. Plaintiffs never challenged the removal.

I have questioned whether the amount in controversy in this action meets the jurisdictional threshold based on two observations. (See Court's Order, Jan. 5, 1999.) First, defendants appear to have arrived at their allegation that plaintiffs seek over $100,000 in compensatory damages simply

---

[1] Section 1332 provides in pertinent part:

> The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between-- (1) citizens of different States . . .

Section 1441(a), provides in relevant part:

> [A]ny civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

[2] The amount in controversy requirement for diversity jurisdiction was raised from $50,000 to $75,000 effective January 17, 1997. See Federal Courts Improvement Act of 1996, Pub. L. No. 104-317, 110 Stat 3850 (enacted October 19, 1996).

by adding together plaintiff's two claims for in excess of $50,000 in damages. These two claims, however, seem to be plead merely as alternative bases of recovery (or alternative types of relief) for the same loss. Thus, plaintiffs' damages allegations seem to put in controversy only "in excess of" $50,000 in actual damages, and are not sufficient of themselves to establish the requisite amount in controversy. Second, plaintiffs' prayer for damages aside, I entertain "doubt that any reasonable understanding of plaintiffs' underlying cause of action could support an allegation that the amount in controversy meets the requisite jurisdictional amount." (Id.)

In their response to the January 5th Order, defendants appear to have abandoned their claim that plaintiffs expressly demand over $100,000 in damages. Rather, counsel assert that, at the time of removal, a generous reading of plaintiffs' allegations seemed to indicate that more than $75,000 could be in controversy. Plaintiffs' counsel has responded to the Order by letter requesting that the case be remanded. Counsel contends that a claim in excess of $50,000 "is required for Common Pleas jurisdiction"[3] and that the two counts alleging over $50,000 in damages "involve legal claims for the same alleged monetary loss." (Pls. Letter to the Court dated January 21, 1999.)

LEGAL STANDARDS

This Court has a continuing duty to ensure that its subject matter jurisdiction is properly invoked. Meritcare Inc. v. St. Paul Mercury Ins. Co., -- F.3d --, 1999 WL 25725, at *2 (3d Cir. Jan.

[3] Plaintiff does not cite, and I have not found, any rule or statute supporting this suggestion that over $50,000 must be plead to obtain Common Pleas jurisdiction. Rather, it appears that more than $50,000 must be plead to avoid compulsory arbitration. See 42 Pa. Cons. Stat. § 7361; Pa. R. Civ. Proc. 1021(c).

25, 1999). A removed action must be remanded "[i]f at any time before final judgment it appears that the district court lacks subject matter jurisdiction." 28 U.S.C. § 1447(c). The removal statutes are strictly construed and all doubts resolved in favor of remand. See, e.g., Meritcare Inc., supra, at *2.

Having removed this action to federal court, defendants bear the burden of demonstrating the facts establishing this Court's jurisdiction. See McNutt v. General Motors Acceptance Corp., 298 U.S. 178, 189 (1936); Meritcare Inc., supra, at *9. Jurisdiction attaches at the time of removal and cannot be defeated by subsequent events or amendments of the complaint. See, e.g., St. Paul Mercury Ins. Co. v. Red Cab Co., 303 U.S. 283, 291-92, 294 (1938). Accordingly, defendants must establish that at the time of removal the amount in controversy in this action exceeded $75,000, exclusive of interest and costs.

A.

To assess the amount in controversy in a case, the court looks first to the complaint. See Angus v. Shiley Inc., 989 F.2d 142, 145-46 (3d Cir. 1993). "[I]f, upon the face of the complaint, it is obvious that the suit cannot involve the necessary amount, removal will be futile and remand will follow." St. Paul Mercury, 303 U.S. at 291-92. If the amount in controversy is not clear upon the face of the complaint, however, the court looks beyond the complaint itself to the facts alleged in the defendant's notice of removal or to proofs offered in support of jurisdiction once it has been called into question. See e.g., Singer v. State Farm Mutual Automobile Ins. Co., 116 F.3d 373, 377 (9th Cir. 1997), citing Allen v. R& H Oil & Gas Co., 63 F.3d 1326, 1335-36 (5th Cir. 1995); cf. Angus, 989 F.2d at 145 n. 3 (noting distinction between considering materials extraneous to the complaint

offered to amend the damages claims and considering materials to clarify ambiguity in original claims). See generally 16 James Wm. Moore et al., Moore's Federal Practice ¶ 107.14[2][g] (3d ed. 1996).

B.

When assessing whether the amount in controversy satisfies the jurisdictional amount, courts generally employ rules articulated by the Supreme Court in St. Paul Mercury Ins. Co. v. Red Cab Co., 303 U.S. 283, 291-92, 294 (1938).[4] See generally 15-16 Moore's Federal Practice ¶¶ 102.107[3], 107.14[2][g] (3d ed. 1996); 14B Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, Federal Practice and Procedure § 3702 (3d ed. 1998). These rules are often described as constituting a single "legal certainty" test or standard. However, both the language of St. Paul Mercury and the authorities relied upon in that case suggest that these rules actually encompass two different analyses applicable to two broadly distinguishable sorts of cases. See generally Essex Ins. Co. v. J & D Blackwell Enterprises, Inc., 1993 WL 204109, at *2-*4 (E.D. PA. June 9, 1993), aff'd 16 F.3d 403 (3d Cir. 1993); Alice M. Noble-Allgire, Removal of Diversity Actions When the Amount in Controversy Cannot be Determined from the Face of Plaintiff's Complaint: The Need for Judicial and Statutory Reform to Preserve Defendant's Equal Access to Federal Courts, 62 Mo. L. Rev. 681, 700-710 (1997).

First, there are cases involving unliquidated claims, such as claims for personal injuries and/or punitive damages. In these cases where damages are indeterminate by their nature (prior to

[4] As noted below, some courts have parted from St. Paul Mercury in certain removed cases where the complaint either does not specify damages or alleges less than the jurisdictional amount. See infra note 7.

resolution on the merits by the fact-finder), the plaintiff's demand supplies the presumptive amount in controversy,[5] though it is not necessarily conclusive.[6] When there is no specific demand for damages in such cases, the court must independently appraise the plaintiff's claims and take the measure of the amount in controversy "by a reasonable reading of the value of the rights being litigated." Angus v. Shiley Inc., 989 F.2d at 146 (citations omitted). The case should be remanded only if the court determines that a reasonable jury could not return a verdict in excess of the jurisdictional threshold. See id. at 146;see also Meritcare Inc. v. St. Paul Mercury Ins. Co., 1999 WL 25725, at * (3d Cir. January 25, 1999) (removed case must be remanded "[w]hen it appears to a legal certainty that the plaintiff was never entitled to recover the minimum [jurisdictional] amount").[7]

---

[5] As the Court stated in Barry v. Edmunds:

> [I]n an action of trespass, or assault and battery, where a law prescribes no limitation as to the amount to be recovered, and the plaintiff has a right to estimate his damages at any sum, the damage stated in the declaration is the thing put in demand, and presents the only criterion to which, from the nature of the action, we can resort in settling the question of jurisdiction. The proposition, then, is simply this: where the law gives no rule, the demand of the plaintiff must furnish one . . . .

Barry, 116 U.S. at 560-61, quoting Wilson v. Daniel, 3 Dall. 401.

[6] See St. Paul Mercury, 303 U.S. at 288-89:

> [I]f, from the face of the pleadings, it is apparent, to a legal certainty, that the plaintiff cannot recover the amount claimed or if, from the proofs, the court is satisfied to a like certainty that the plaintiff never was entitled to recover that amount, and that his claim was therefore colorable for the purpose of conferring jurisdiction, the suit will be dismissed.

See also, e.g., Jaconski v. Avisun Corp., 359 F.2d 931, 934-35 (3d Cir. 1966) (discussing what it means for a demand to be "colorable for the purpose of conferring jurisdiction").

[7] As defendants obliquely note, courts have split as to what standard should be applied in assessing the amount in controversy in removed actions in which the complaint does not allege specific damages in excess of the jurisdictional requirement. See, e.g. Gafford v. General Elec. Co., 997 F.2d

Second, there are those cases which involve only liquidated claims,[8] like an action to recover debt and other contract actions.[9] In this type of case, "the law gives the rule" -- that is, the law

150, 158 (6th Cir. 1993) (discussing various standards); Neff v. General Motors Corp., 163 F.R.D. 478, 481-82 (E.D. Pa. 1995) (same). At least three courts of appeals (the Fifth, Sixth, and Ninth Circuits) require that defendants show that the amount in controversy "more likely than not" exceeds the jurisdictional amount (the so-called "preponderance of the evidence" standard). Several district courts require that defendants show to a "legal certainty" that the amount in controversy exceeds the jurisdictional amount -- effectively imposing the converse of the standard applied in an original jurisdiction case. And the Second and Seventh Circuit courts of appeals require a showing that there is a "reasonable probability" that the amount in controversy meets the jurisdictional amount -- a standard which appears to be simply an affirmative restatement of the legal certainty test. See Gould v. Artisoft, Inc., 1 F.3d 544, 547 (7th Cir. 1993), quoting Shaw. Dow Brands, Inc., 994 F.2d 364, 366, 366 n. 2 (7th Cir. 1993) (original jurisdiction case); United Food & Commercial Workers Union, Local 919 v. Centermark Properties Meriden Square, Inc., 30 F.3d 298, 304-05 (2d Cir. 1994), quoting Tongkook Am., Inc. v. Shipton Sportswear Co., 14 F.3d 781, 784 (2d Cir. 1994) (original diversity jurisdiction case), citing Moore v. Betit, 511 F.2d 1004, 1006 (2d Cir. 1975) (using "reasonable probability" standard as converse of legal certainty standard in original diversity jurisdiction case). This later approach is supported by several commentators, who argue that the same standard should be applied to a removed case as to a case originally filed in federal court. See 16 Moore's Federal Practice § 107.24[2][g]; Noble-Allgire, supra (same).

Because the Third Circuit has not explicitly addressed this debate, some decisions in this district have assumed that the question was an open one and adopted the so-called "preponderance of the evidence" standard. See, e.g., Mercante v. Preston Trucking Co., Inc., 1997 WL 230826, at *2-*3 (E.D. Pa. May 1, 1997). However, in Angus v. Shiley, the Court appeared to use a "legal certainty" (or "reasonable probability") standard. See id. at 146 (finding district court had properly retained jurisdiction where there was "no doubt that a reasonable jury likely could have valued [the plaintiff's] losses at over [the jurisdictional amount]"). And more recently, the Third Circuit explicitly indicated that the "legal certainty" standards should be applied to a removed case in the same manner as they would to case filed originally in federal court. Meritcare Inc. v. St. Paul Mercury Ins. Co., -- F.3d --, 1999 WL 25725, at *2-*3 (3d Cir. 1999) (noting that under 28 U.S.C. § 1441(a) "'[t]he propriety of removal . . . depends on whether the case originally could have been filed in federal court'" and stating "[w]hen it appears to a legal certainty that the plaintiff was never entitled to recover the minimum amount set by Section 1332, the removed case must remanded [sic]. . ."), quoting City of Chicago v. International College of Surgeons, 522 U.S. 156, 118 S.Ct. 523, 529 (1997). In my view, therefore, this circuit has joined the Second and the Seventh in directing that amounts in controversy should generally be assessed in the same fashion in removed cases as they are in cases filed in federal court.

[8] A claim for damages "is 'liquidated' in character if [the] amount thereof is fixed, has been agreed upon, *or is capable of ascertainment by mathematical computation or operation of law*." Black's Law Dictionary 930 (6th ed. 1990) (emphasis added; citation omitted).

[9] In Barry, the Court cited the example of a debt action, in which "the principal and interest are put in demand, and the plaintiff can recover no more, though he may lay his damages [for ten times as much]." Barry v. Edmunds, 116 U.S. at 560, quoting Wilson v. Daniel, 3 Dall. 401 (1789). In such cases "where the law gives the rule, the legal cause of action, and not the plaintiff's demand, must be

prescribes what damages plaintiffs may recover should they prevail on their claims. See St. Paul Mercury, 303 U.S. at 288-89; Barry v. Edmunds, 116 U.S. 550, 560 (1886). When the court inquires as to the amount in controversy in cases such as these, "the legal cause of action, and not the plaintiff's demand, must be regarded." Barry v. Edmunds, 116 U.S. 550, 560 (1886), quoting Wilson v. Daniel, 3 Dall. 401 (1789). Cf. Suber v. Chrysler Corp., 104 F.3d 578, 584 (3d Cir. 1997) (stating in automobile "lemon law" case: "whether there is a legal certainty that Suber's claims are for less than [the jurisdictional amount] depends on what damages Suber could conceivably recover under New Jersey state law").

DISCUSSION

In my view, this case clearly falls within the second category of cases described above. Plaintiffs simply claim that defendants denied them certain monies due and inflated certain charges owed in connection with some portion of the vehicle installment contracts financed through defendants under their agreement with plaintiffs. Plaintiffs' maximum potential recovery on their claims is precisely ascertainable and limited by law.[10] The question is simply whether, taking plaintiffs' allegations as true and assuming they prevail in proving all of their claims, plaintiffs' damages could add up to more than $75,000.

---

regarded." Id., quoting Wilson, supra.

[10] Thus, even if plaintiffs did allege over $100,000 in damages as defendants initially claimed, their demand would not be conclusive on the amount in controversy. As already noted, however, defendants no longer appear to maintain that plaintiffs' two claims "for in excess of" $50,000 are properly aggregated to establish the amount in controversy, see Def. Brief at 2, 6-7, and, in any event, I think it plain that plaintiffs' two counts for "in excess of $50,000" are merely asserted as alternative theories of recovery for the same underlying loss.

Defendants have not provided any plausible interpretation of plaintiffs' claims suggesting that their damages could amount to anything like $75,000. The only specific argument defendants make in this regard is unsupported by the complaint and implausible.[11] Moreover, though they

[11] Defendants argue that plaintiffs have claimed entitlement to cash advances, rather than mere paper credits, for the value of the "Program Cars" they sold, and therefore have put the total cash advance value of these cars -- over $93,000, according to defendants -- in controversy. (Def. Brief at 11.) This would, however, be a most illogical claim for plaintiffs to make, as the Program Cars were not theirs and they would have been entitled only to a portion of the cars' value (as sales commissions) at most. In any event, I think it clear that plaintiffs do not claim entitlement to this sum; rather, they merely maintain that they should not have been charged interest on Program Car "advances" that in fact were merely paper credits made for accounting purposes. See Comp. ¶¶ 31, 37-40

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

INTERNATIONAL FLEET AUTO SALES, INC., and JOSEPH GALLAGHER	:	CIVIL ACTION
	:	No. 97-CV-1675
v.	:	
	:	
NATIONAL AUTO CREDIT and AGENCY RENT-A-CAR	:	

easily could have done so either through discovery or by having an accountant examine plaintiffs' accounts, defendants have failed to offer any competent proof extrinsic to the complaint suggesting that this dispute involves anything like $75,000. Thus, defendants have failed to carry their burden of proving that the amount in controversy meets the jurisdictional requirement.

Moreover, I am convinced upon my own independent appraisal of plaintiffs' complaint and its attachments that plaintiffs' underlying claims, no matter how generously read, cannot reasonably be understood to be worth in excess of $75,000 in damages.

For these reasons, I conclude that the Court lacks subject matter jurisdiction and therefore will remand the case to the state court.

AND NOW this day of February, 1999, upon consideration of defendants' brief in support of their removal of this action and plaintiff's letter to the Court in response thereto, and for the reasons set forth in the accompanying memorandum, it is hereby ORDERED that this case is REMANDED to the Court of Common Pleas of Philadelphia County.

_____

THOMAS N. O'NEILL, JR. J..